

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH LOUIS,

Defendant-Appellant.

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UNPUBLISHED

May 12, 2011

No. 296623

Wayne Circuit Court

LC No. 09-017990-FH

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Defendant Joseph Louis appeals as of right his jury trial convictions of attempted first-degree home invasion,<sup>1</sup> and malicious destruction of a building (\$200 or more but less than \$1,000).<sup>2</sup> The trial court sentenced Louis, as a fourth habitual offender,<sup>3</sup> to 2-1/2 to 10 years in prison for the attempted first-degree home invasion conviction and one year in jail for the malicious destruction of a building conviction. We affirm.

I. FACTS

On July 7, 2009, at approximately at 11:50 p.m., Wendy Givens was at her home in her duplex in Detroit. While Givens was in her bedroom at the back of the house, she heard a series of loud noises, which she described as “four or five loud bams.” After the noises stopped, she heard an alarm. After walking to another bedroom at the front of the house, she realized that the alarm was the security alarm system in her house. The phone rang, and it was the alarm monitoring company. Although she understood from her conversation with the person at the alarm company that the police had been called, she dialed 9-1-1 and told the operator that her alarm was going off and she did not know why. She stated that she did not want to go downstairs because she did not know why the alarm was going off. She asked the operator to send the police quickly.

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<sup>1</sup> MCL 750.110a(2); MCL 750.92.

<sup>2</sup> MCL 750.380(4)(a).

<sup>3</sup> MCL 769.12.

Givens remained upstairs while she waited for the police to arrive. At approximately 12:07 a.m., Detroit police officers Jennifer Adams and Jeremy Watters pulled up outside the house in a police car. The alarm was still going off when they arrived. Givens greeted the officers from her second floor balcony, then came downstairs. When she got downstairs, she discovered that the front door was not in the same condition as the last time Givens had observed it. The door was open about a foot, and it was damaged. The trim was torn off, some of the plaster underneath the trim was torn or damaged, and the door jamb was damaged so that the door would not close. In addition to the police officers, Givens saw a man she did not know, whom she later identified as Louis, outside the house. She had not given Louis permission to enter her house.

Officers Adams and Watters also saw Louis as they approached the house. According to the officers, as they approached, Louis was walking away from the front door house and then he sat down on the edge of the porch. Officer Adams noticed wooden shavings or splinters around the edge of the wooden door. Both officers testified that they saw similar wood shavings or splinters on Louis' shoulder. Officer Watters also observed "smudge marks" on Louis' left shoulder as if "he had been pressing his shoulder into something."

Upon questioning, Louis told Officer Watters that his girlfriend lived at the house. However, after Givens came downstairs and denied knowing Louis, Louis explained that he had been urinating on the side of the building. He also said that he was drinking down the street at the park. Officer Watters arrested Louis at 12:51 a.m. Watters confirmed at trial that there is a park about one block away from Givens' house.

Givens testified at trial that a closet door near the front door of the house, which she had closed earlier in the day, was open when she came downstairs to speak to the police. On cross-examination, however, she admitted that, when asked at the preliminary examination whether there was anything unusual about the closet door, she testified: "That door may have been open. If I make no mistake it may have. I can't say for certain." Nothing was missing from the house, and nothing besides the front door was damaged.

Carol Guy, who is the office manager of New Center Court Apartments, testified that she had been in a relationship with Louis for seven years. He lived with her at New Center Court during that time. According to Guy, on July 6, 2009, Louis did some work for John Shea, the property manager at New Center Court apartments. Louis was to tear down the ceiling of one of the apartments, which would involve the removal of plaster, wood, and paint chips. Shea testified that Louis stopped working around 4:00 or 4:30 p.m. Louis had plaster and paint on him and "general debris from doing that type of work." Guy was in her apartment when Louis came home around 5:15 or 5:30 p.m. and observed that Louis had dust, paint, and wood on his head, shoulders, and pants. Louis and Guy got into an argument, and Louis said he was going to go to the store and take a walk. He did not clean up or take a shower before he left, and looked the same when he left as he had when he came home from work. There is a park near Guy's apartment building.

Dr. Donadien Bascal Kamdm, defense expert in wood mechanics and wood identification, testified that it would not be possible for a person without special education or training in identifying wood species to reliably determine whether two splinters of wood were

from the same source based on a visual examination with the naked eye. Based on photographs of the damage to the door, he also opined that the door latch and the two deadbolts had not been engaged. He did not see scars or marks on the molding that he would expect to see if the door had been forced open with the latch and deadbolts in the locked position.

The prosecution charged Louis with first-degree home invasion<sup>4</sup> and malicious destruction of a building. With regard to the first charge, the jury found Louis guilty of the lesser-included charge of attempted first-degree home invasion. The jury also found Louis guilty of malicious destruction of a building. Louis now appeals his conviction and sentencing.

## II. SUFFICIENCY OF THE EVIDENCE

### A. STANDARD OF REVIEW

Louis argues that there was insufficient evidence to sustain his conviction of attempted first-degree home invasion because a rational jury could not find beyond a reasonable doubt that he intended to commit larceny or other felony in Givens' home.

“In evaluating [a] defendant’s claim regarding the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.”<sup>5</sup> Whether a verdict is supported by constitutionally sufficient evidence is a question of law subject to de novo review.<sup>6</sup> However, “[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.”<sup>7</sup>

### B. LEGAL STANDARDS

Under MCL 750.92, “an ‘attempt’ consists of (1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense.”<sup>8</sup> The Michigan Supreme Court has “further explained the elements of attempt . . . as including ‘an intent to do an act or to bring about certain consequences which would in law amount to a crime; and . . . an act in furtherance of that intent which, as it is most commonly put, goes beyond mere preparation.’”<sup>9</sup>

MCL 750.110a(2) sets forth the elements of the crime of first-degree home invasion:

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<sup>4</sup> MCL 750.110a(2).

<sup>5</sup> *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

<sup>6</sup> *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

<sup>7</sup> *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

<sup>8</sup> *People v Thousand*, 465 Mich 149, 163; 631 NW2d 694 (2001).

<sup>9</sup> *Id.* (citations omitted).

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

- (a) The person is armed with a dangerous weapon.
- (b) Another person is lawfully present in the dwelling.

### C. APPLYING THE LEGAL STANDARDS

In this case, the first-degree home invasion charge and the lesser attempted home invasion charge were premised on Louis' intent to commit a larceny in Givens' home.

There was clearly sufficient evidence for the jury to conclude that Louis entered Givens' residence without permission while Givens was lawfully present in the residence. Givens testified that while she was at her home around midnight, she heard a series of loud noises ("four or five loud bams"). After the noises stopped, the security alarm system in her house began to sound. In addition, one of the two police officers who responded to the 9-1-1 calls testified that Louis "was exiting the door as I was approaching"; "[h]e had bladed his body, and was exiting out the door, and he immediately sat on the ledge on the front porch."

There was also evidence to support a finding of a "breaking." When Givens came downstairs to speak to the police officers, she observed that the front door was in a different condition than the last time she had seen it. The trim was torn off, some of the plaster underneath the trim was torn or damaged, and the door jamb was damaged so that the door would not close. In addition, both of the police officers testified that they noticed wood shavings or splinters on Louis' shoulder that appeared to have come from the damaged door.

Indeed, Louis only contests the sufficiency of the evidence with respect to his intent to commit larceny in the dwelling. "Intent to commit larceny cannot be presumed solely from proof of the breaking and entering."<sup>10</sup> To prove intent to commit larceny, there must be at least "some circumstance reasonably leading to the conclusion that larceny was intended."<sup>11</sup> "However, intent may reasonably be inferred from the nature, time and place of [a] defendant's acts before and during the breaking and entering."<sup>12</sup> In this case, nothing was missing from the house and nothing besides the front door was damaged. In addition, there was evidence that the

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<sup>10</sup> *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988).

<sup>11</sup> *People v Palmer*, 42 Mich App 549, 552; 202 NW2d 536 (1972).

<sup>12</sup> *Uhl*, 169 Mich App at 220.

alarm had been sounding for over 10 minutes before the police arrived, which suggests that Louis was not interrupted in the act of taking something or looking for something to take.

Nonetheless, there was testimony from Givens to support an inference by the jury that Louis intended to commit larceny. Givens testified at trial that the door of a closet near the front of the house, which she had closed earlier in the day, was open when she came downstairs to speak to the police. On that basis, the jury could permissibly have inferred that Louis entered the house and opened the closet door in search of something to take. Defense counsel attempted to undermine this testimony by cross-examining Givens about her statements at the preliminary examination. Givens admitted that, when asked at the preliminary examination whether there was anything unusual about the closet door, she testified: “That door may have been open. If I make no mistake it may have. I can’t say for certain.” Defense counsel did not further question Givens about the apparent change in her level of certainty.

Because the jury was free to find Givens’ trial testimony credible, notwithstanding defense counsel’s attempt to undermine her credibility on cross-examination, there was sufficient evidence to allow the jury to infer that Louis intended to commit larceny in the house. “All conflicts with regard to the evidence must be resolved in favor of the prosecution[,]” and “[w]e must not interfere with the jury’s role of determining the weight of the evidence or the credibility of witnesses.”<sup>13</sup> Accordingly, we conclude that there was sufficient evidence to sustain Louis’ conviction of attempted first-degree home invasion because a rational jury could have found beyond a reasonable doubt that he intended to commit larceny in Givens’ home.

### III. SCORING OF OFFENSE VARIABLE 4

#### A. STANDARD OF REVIEW

Louis argues that the trial court erred in assessing 10 points for offense variable (OV) 4 because there was no evidence that Givens suffered serious psychological injury requiring professional treatment. “A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.”<sup>14</sup> “Scoring decisions for which there is any evidence in support will be upheld.”<sup>15</sup> Interpretation and application of the legislative sentencing guidelines<sup>16</sup> involves legal questions that this Court reviews de novo.<sup>17</sup>

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<sup>13</sup> *People v Drohan*, 264 Mich App 77, 88; 689 NW2d 750 (2004).

<sup>14</sup> *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

<sup>15</sup> *Id.*

<sup>16</sup> MCL 777.1 et seq.

<sup>17</sup> *People v Smith*, 488 Mich 193, 198; 793 NW2d 666 (2010).

## B. LEGAL STANDARDS

“Offense variable 4 is psychological injury to a victim.”<sup>18</sup> A trial court should score 10 points for OV 4 where “[s]erious psychological injury requiring professional treatment occurred to a victim.”<sup>19</sup> The statute further instructs the trial court to “[s]core [10] points if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.”<sup>20</sup>

## C. APPLYING THE LEGAL STANDARDS

In this case, the trial court found that Givens suffered a serious psychological injury on the basis of a letter from Givens, which the trial court read into the record at sentencing:

“[S]ince the break-in I’ve had more sleepless nights than I can count. I’m compulsively checking the locks on the windows and doors. I wake up wondering whether I hung up the phone in case the alarm company tries to reach me. Everytime [sic] I walk passed [sic] my windows I survey the perimeter of my home just to see if someone is around my house that does not belong there.

When I come home after dark I panic when I arrive home and realize that I’d forgotten to turn on the porch light. To assuage these fears and curtail my stress level, I’ve spent money that I do not have to replace entry doors with security doors, and to update the security system in my home. Despite these changes my fears have not been eliminated they’ve simply been curtailed.

The devastation [Louis] caused me has not been limited to me. My family members have spent numerous nights with me comforting me after I’ve heard a strange noise.”

Michigan case law supports that subjective evidence regarding psychological consequences to the victim, including a victim’s disrupted life, stress, personality and emotional changes, and nightmares, can support a trial court’s scoring of 10 points under OV 4.<sup>21</sup> In *People v Drohan*,<sup>22</sup> this Court concluded that the evidence supported the scoring of 10 points for OV 4, where the victim impact statement indicated, in part, that the victim’s

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<sup>18</sup> MCL 777.34(1).

<sup>19</sup> MCL 777.34(1)(a).

<sup>20</sup> MCL 777.34(2).

<sup>21</sup> *People v Ericksen*, 288 Mich App 192, 203; 793 NW2d 120 (2010); *Drohan*, 264 Mich App at 90.

<sup>22</sup> *Drohan*, 264 Mich App at 90.

“life has been terrible since the incidents. She states that she has a lot of nightmares, problems in her marriage, problems at work, and in just about every other facet of her life. She states that this whole situation has been a nightmare, and again has [a]ffected every area of her life. She indicates that she has not sought treatment as of this writing date, however, she plans to do so in the future.”

Similarly, in *People v Ericksen*,<sup>23</sup> this Court held that there was sufficient evidence to uphold the trial court’s assessment of 10 points under OV 4 on the basis of evidence that indicated that the victim suffered from depression and that his personality had changed.

OV 4 does not require a professional or expert opinion concerning psychological injury;<sup>24</sup> nor does it take into account the severity of the crime. In this case, the evidence of the victim’s countless sleepless nights, compulsive checking of locks and surveying the perimeter of her property for intruders, and her “panic” and “devastation,” was adequate evidence to support the trial court’s scoring decision.<sup>25</sup>

We affirm.

/s/ Kurtis T. Wilder  
/s/ William C. Whitbeck  
/s/ Karen M. Fort Hood

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<sup>23</sup> *Ericksen*, 288 Mich App at 203.

<sup>24</sup> MCL 777.34(2).

<sup>25</sup> See *Endres*, 269 Mich App at 417.